

AMENDED IN ASSEMBLY JUNE 28, 2005

AMENDED IN ASSEMBLY JUNE 16, 2005

AMENDED IN SENATE APRIL 20, 2005

SENATE BILL

No. 919

Introduced by Senator Cox

February 22, 2005

An act to amend Section 11126 of the Government Code, relating to open meetings.

LEGISLATIVE COUNSEL'S DIGEST

SB 919, as amended, Cox. Meetings.

(1) The Bagley-Keene Open Meeting Act requires, with specified exceptions for authorized closed sessions, that all meetings of a state body be open and public and all persons be permitted to attend meetings of a state body.

This bill would authorize the California Gambling Control Commission to hold closed sessions, as specified, when discussing matters that are confidential pursuant to the Tribal-State Gaming Compacts.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would find that, in order for the California Gambling Control Commission to meet its obligation, as imposed by the Tribal-State Gaming Compacts, to maintain the confidentiality of trade secrets, nonpublic financial data, and other confidential or

proprietary data and information, it is necessary that the commission meet in closed session.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11126 of the Government Code, as
2 added by Section 2 of Chapter 1113 of the Statutes of 2002, is
3 amended to read:

4 11126. (a) (1) Nothing in this article shall be construed to
5 prevent a state body from holding closed sessions during a
6 regular or special meeting to consider the appointment,
7 employment, evaluation of performance, or dismissal of a public
8 employee or to hear complaints or charges brought against that
9 employee by another person or employee unless the employee
10 requests a public hearing.

11 (2) As a condition to holding a closed session on the
12 complaints or charges to consider disciplinary action or to
13 consider dismissal, the employee shall be given written notice of
14 his or her right to have a public hearing, rather than a closed
15 session, and that notice shall be delivered to the employee
16 personally or by mail at least 24 hours before the time for
17 holding a regular or special meeting. If notice is not given, any
18 disciplinary or other action taken against any employee at the
19 closed session shall be null and void.

20 (3) The state body also may exclude from any public or closed
21 session, during the examination of a witness, any or all other
22 witnesses in the matter being investigated by the state body.

23 (4) Following the public hearing or closed session, the body
24 may deliberate on the decision to be reached in a closed session.

25 (b) For the purposes of this section, “employee” does not
26 include any person who is elected to, or appointed to a public
27 office by, any state body. However, officers of the California
28 State University who receive compensation for their services,
29 other than per diem and ordinary and necessary expenses, shall,
30 when engaged in that capacity, be considered employees.
31 Furthermore, for purposes of this section, the term employee
32 includes a person exempt from civil service pursuant to

1 subdivision (e) of Section 4 of Article VII of the California
2 Constitution.

3 (c) Nothing in this article shall be construed to do any of the
4 following:

5 (1) Prevent state bodies that administer the licensing of
6 persons engaging in businesses or professions from holding
7 closed sessions to prepare, approve, grade, or administer
8 examinations.

9 (2) Prevent an advisory body of a state body that administers
10 the licensing of persons engaged in businesses or professions
11 from conducting a closed session to discuss matters that the
12 advisory body has found would constitute an unwarranted
13 invasion of the privacy of an individual licensee or applicant if
14 discussed in an open meeting, provided the advisory body does
15 not include a quorum of the members of the state body it advises.
16 Those matters may include review of an applicant's
17 qualifications for licensure and an inquiry specifically related to
18 the state body's enforcement program concerning an individual
19 licensee or applicant where the inquiry occurs prior to the filing
20 of a civil, criminal, or administrative disciplinary action against
21 the licensee or applicant by the state body.

22 (3) Prohibit a state body from holding a closed session to
23 deliberate on a decision to be reached in a proceeding required to
24 be conducted pursuant to Chapter 5 (commencing with Section
25 11500) or similar provisions of law.

26 (4) Grant a right to enter any correctional institution or the
27 grounds of a correctional institution where that right is not
28 otherwise granted by law, nor shall anything in this article be
29 construed to prevent a state body from holding a closed session
30 when considering and acting upon the determination of a term,
31 parole, or release of any individual or other disposition of an
32 individual case, or if public disclosure of the subjects under
33 discussion or consideration is expressly prohibited by statute.

34 (5) Prevent any closed session to consider the conferring of
35 honorary degrees, or gifts, donations, and bequests that the donor
36 or proposed donor has requested in writing to be kept
37 confidential.

38 (6) Prevent the Alcoholic Beverage Control Appeals Board
39 from holding a closed session for the purpose of holding a
40 deliberative conference as provided in Section 11125.

1 (7) (A) Prevent a state body from holding closed sessions
2 with its negotiator prior to the purchase, sale, exchange, or lease
3 of real property by or for the state body to give instructions to its
4 negotiator regarding the price and terms of payment for the
5 purchase, sale, exchange, or lease.

6 (B) However, prior to the closed session, the state body shall
7 hold an open and public session in which it identifies the real
8 property or real properties that the negotiations may concern and
9 the person or persons with whom its negotiator may negotiate.

10 (C) For purposes of this paragraph, the negotiator may be a
11 member of the state body.

12 (D) For purposes of this paragraph, “lease” includes renewal
13 or renegotiation of a lease.

14 (E) Nothing in this paragraph shall preclude a state body from
15 holding a closed session for discussions regarding eminent
16 domain proceedings pursuant to subdivision (e).

17 (8) Prevent the California Postsecondary Education
18 Commission from holding closed sessions to consider matters
19 pertaining to the appointment or termination of the Director of
20 the California Postsecondary Education Commission.

21 (9) Prevent the Council for Private Postsecondary and
22 Vocational Education from holding closed sessions to consider
23 matters pertaining to the appointment or termination of the
24 Executive Director of the Council for Private Postsecondary and
25 Vocational Education.

26 (10) Prevent the Franchise Tax Board from holding closed
27 sessions for the purpose of discussion of confidential tax returns
28 or information the public disclosure of which is prohibited by
29 law, or from considering matters pertaining to the appointment or
30 removal of the Executive Officer of the Franchise Tax Board.

31 (11) Require the Franchise Tax Board to notice or disclose any
32 confidential tax information considered in closed sessions, or
33 documents executed in connection therewith, the public
34 disclosure of which is prohibited pursuant to Article 2
35 (commencing with Section 19542) of Chapter 7 of Part 10.2 of
36 the Revenue and Taxation Code.

37 (12) Prevent the Board of Corrections from holding closed
38 sessions when considering reports of crime conditions under
39 Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 8 (commencing with Section 60850) of, Part 33 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence,

1 a state body may also meet with a state conciliator who has
2 intervened in the proceedings.

3 (d) (1) Notwithstanding any other provision of law, any
4 meeting of the Public Utilities Commission at which the rates of
5 entities under the commission's jurisdiction are changed shall be
6 open and public.

7 (2) Nothing in this article shall be construed to prevent the
8 Public Utilities Commission from holding closed sessions to
9 deliberate on the institution of proceedings, or disciplinary
10 actions against any person or entity under the jurisdiction of the
11 commission.

12 (e) (1) Nothing in this article shall be construed to prevent a
13 state body, based on the advice of its legal counsel, from holding
14 a closed session to confer with, or receive advice from, its legal
15 counsel regarding pending litigation when discussion in open
16 session concerning those matters would prejudice the position of
17 the state body in the litigation.

18 (2) For purposes of this article, all expressions of the
19 lawyer-client privilege other than those provided in this
20 subdivision are hereby abrogated. This subdivision is the
21 exclusive expression of the lawyer-client privilege for purposes
22 of conducting closed session meetings pursuant to this article.
23 For purposes of this subdivision, litigation shall be considered
24 pending when any of the following circumstances exist:

25 (A) An adjudicatory proceeding before a court, an
26 administrative body exercising its adjudicatory authority, a
27 hearing officer, or an arbitrator, to which the state body is a
28 party, has been initiated formally.

29 (B) (i) A point has been reached where, in the opinion of the
30 state body on the advice of its legal counsel, based on existing
31 facts and circumstances, there is a significant exposure to
32 litigation against the state body.

33 (ii) Based on existing facts and circumstances, the state body
34 is meeting only to decide whether a closed session is authorized
35 pursuant to clause (i).

36 (C) (i) Based on existing facts and circumstances, the state
37 body has decided to initiate or is deciding whether to initiate
38 litigation.

39 (ii) The legal counsel of the state body shall prepare and
40 submit to it a memorandum stating the specific reasons and legal

1 authority for the closed session. If the closed session is pursuant
2 to paragraph (1), the memorandum shall include the title of the
3 litigation. If the closed session is pursuant to subparagraph (A) or
4 (B), the memorandum shall include the existing facts and
5 circumstances on which it is based. The legal counsel shall
6 submit the memorandum to the state body prior to the closed
7 session, if feasible, and in any case no later than one week after
8 the closed session. The memorandum shall be exempt from
9 disclosure pursuant to Section 6254.25.

10 (iii) For purposes of this subdivision, “litigation” includes any
11 adjudicatory proceeding, including eminent domain, before a
12 court, administrative body exercising its adjudicatory authority,
13 hearing officer, or arbitrator.

14 (iv) Disclosure of a memorandum required under this
15 subdivision shall not be deemed as a waiver of the lawyer-client
16 privilege, as provided for under Article 3 (commencing with
17 Section 950) of Chapter 4 of Division 8 of the Evidence Code.

18 (f) In addition to subdivisions (a), (b), and (c), nothing in this
19 article shall be construed to do any of the following:

20 (1) Prevent a state body operating under a joint powers
21 agreement for insurance pooling from holding a closed session to
22 discuss a claim for the payment of tort liability or public liability
23 losses incurred by the state body or any member agency under
24 the joint powers agreement.

25 (2) Prevent the examining committee established by the State
26 Board of Forestry and Fire Protection, pursuant to Section 763 of
27 the Public Resources Code, from conducting a closed session to
28 consider disciplinary action against an individual professional
29 forester prior to the filing of an accusation against the forester
30 pursuant to Section 11503.

31 (3) Prevent an administrative committee established by the
32 California Board of Accountancy pursuant to Section 5020 of the
33 Business and Professions Code from conducting a closed session
34 to consider disciplinary action against an individual accountant
35 prior to the filing of an accusation against the accountant
36 pursuant to Section 11503. Nothing in this article shall be
37 construed to prevent an examining committee established by the
38 California Board of Accountancy pursuant to Section 5023 of the
39 Business and Professions Code from conducting a closed hearing

1 to interview an individual applicant or accountant regarding the
2 applicant's qualifications.

3 (4) Prevent a state body, as defined in subdivision (b) of
4 Section 11121, from conducting a closed session to consider any
5 matter that properly could be considered in closed session by the
6 state body whose authority it exercises.

7 (5) Prevent a state body, as defined in subdivision (d) of
8 Section 11121, from conducting a closed session to consider any
9 matter that properly could be considered in a closed session by
10 the body defined as a state body pursuant to subdivision (a) or (b)
11 of Section 11121.

12 (6) Prevent a state body, as defined in subdivision (c) of
13 Section 11121, from conducting a closed session to consider any
14 matter that properly could be considered in a closed session by
15 the state body it advises.

16 (7) Prevent the State Board of Equalization from holding
17 closed sessions for either of the following:

18 (A) When considering matters pertaining to the appointment
19 or removal of the Executive Secretary of the State Board of
20 Equalization.

21 (B) For the purpose of hearing confidential taxpayer appeals
22 or data, the public disclosure of which is prohibited by law.

23 (8) Require the State Board of Equalization to disclose any
24 action taken in closed session or documents executed in
25 connection with that action, the public disclosure of which is
26 prohibited by law pursuant to Sections 15619 and 15641 of this
27 code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455,
28 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of
29 the Revenue and Taxation Code.

30 (9) Prevent the California Earthquake Prediction Evaluation
31 Council, or other body appointed to advise the Director of the
32 Office of Emergency Services or the Governor concerning
33 matters relating to volcanic or earthquake predictions, from
34 holding closed sessions when considering the evaluation of
35 possible predictions.

36 (g) This article does not prevent any of the following:

37 (1) The Teachers' Retirement Board or the Board of
38 Administration of the Public Employees' Retirement System
39 from holding closed sessions when considering matters
40 pertaining to the recruitment, appointment, employment, or

1 removal of the chief executive officer or when considering
2 matters pertaining to the recruitment or removal of the Chief
3 Investment Officer of the State Teachers' Retirement System or
4 the Public Employees' Retirement System.

5 (2) The Commission on Teacher Credentialing from holding
6 closed sessions when considering matters relating to the
7 recruitment, appointment, or removal of its executive director.

8 (3) The California Gambling Control Commission from
9 holding a closed session when discussing matters involving trade
10 secrets, nonpublic financial data, confidential or proprietary
11 information, and other data and information, the public
12 disclosure of which is prohibited by law or a Tribal-State
13 Gaming Compact.

14 (A) Discussion in closed session authorized by this paragraph
15 shall be limited to the confidential data and information related to
16 the agenda item and shall not include discussion of any other
17 information or matter.

18 (B) Before going into closed session the commission shall
19 publicly announce the type of data or information to be discussed
20 in closed session, which shall be recorded upon the commission
21 minutes.

22 (C) Action taken on agenda items discussed pursuant to this
23 paragraph shall be taken in open session.

24 (h) This section shall become operative on January 1, 2006.

25 SEC. 2. The Legislature finds and declares that Section 1 of
26 this act, which amends Section 11126 of the Government Code,
27 imposes a limitation on the public's right of access to the
28 meetings of public bodies or the writings of public officials and
29 agencies within the meaning of Section 3 of Article I of the
30 California Constitution. Pursuant to that constitutional provision,
31 the Legislature makes the following findings to demonstrate the
32 interest protected by this limitation and the need for protecting
33 that interest:

34 In order for the California Gambling Control Commission to
35 meet its obligation, as imposed by the Tribal-State Gaming
36 Compacts, to maintain the confidentiality of tribal information, it
37 is necessary that the commission meet in closed session.

1 *SEC. 3. The provisions of this act shall remain in effect after*
2 *December 31, 2010, unless the Legislature acts to repeal these*
3 *provisions.*

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